No. 80-870

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

DENNIS PERRY JR.,

PETITIONER,

vs.

PEOPLE OF THE STATE
OF ILLINOIS,

RESPONDENT.

ON

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ILLINOIS.

REPLY IN SUPPORT OF CERTIORARI

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The State seeks to justify the search of the vehicle and the examination of the stereo amplifier serial number in the police station parking area on the ground that they had probable cause to believe that the contents of the automobile offended against the law. No such probable cause existed. There is nothing suspicious about students moving from one dormitory to another with personal effects including stereo amplifiers in their cars. Here the officers who saw the students loading things into the car at the dormitory did not identify any of the items being loaded as stolen items. Even when Lt. Keim saw the stereo in the front seat when the Petitioner was arrested, Keim did not recognize it as matching the brand of the stereo stolen. He did not recognize it

as a Pioneer Stereo (R.P.46). He could not see the serial number of the model of stereo at the time of arrest. The police did not have reasonable grounds to believe that the stereo was an "offending item" until after they conducted the search challenged. Until they searched for the serial number, they had no reasonable grounds to believe that the stereo had come from the burglarized house. Without probable cause, the "automobile exception" has no applications.

The state argues for a rule that once the officers have probable cause to believe that an automobile contains items offending against the law, those items may be seized without a warrant long after the automobile is securely in

police custody. Such a contention rips the cases of Chambers v. Maroney, 399 U.S. 42 (1970), Texas v. White, 423 U.S. 67 (1975), and Colorado v. Bannister, U.S. 66 Led2d. 1, 101 S.Ct. 42, (Oct. 20, 1980, out of the whole fabric of search and seizure law created by cases like Delaware v. Prouse, 440 U.S. 648 at 662-663 (1979) (the 4th Amendment protects privacy in autos), Coolidge v. New Hampshire, 403 U.S. 443 (1971) (Warrant required to search an automobile in the absence of a clearly defined exception). Preston v. United States, 376 U.S. 364 (1964) (a warrant is required after the vehicle is secure and the driver is no longer near the vehicle). United States v. Chadwick, 443 U.S. 1 (1977) (exigent circumstances do not justify search of

a footlocker taken from an auto). Arkansas v. Sanders, 442 U.S. 753 (1979) (exigent circumstances do not justify searching a suitcase when an auto carring it is stopped). South Dakota v. Opperman, 428 U.S. 364 (1976) (investigative searches of automobiles require warrants or other clearly defined exceptions). From the totality of these cases, the Court ought to define a rule that prohibits a warrantless search of automobiles after exigent circumstances cease to exist. Colorado v. Bannister , U.S. , 66 Led.2d 1, 101 S.Ct. 42 (Oct. 20, 1980) does not preclude such a rule. There the lug nuts were seized immediately after the vehicle was stopped. Exigent circumstances still existed. Chambers v.

Maroney, 399 U.S. 42 and Texas v. White, 423 U.S. 67 also represent cases where exigent circumstances still exist. In both cases, the search occurred as soon as the car was brought to the police station. "The probable cause factor still obtained at the station house and so did the mobility of the car..." 399 U.S. at 52. In the present case "exigent circumstances" no longer existed. Perry and the car he had been driving were spearated. Perry was in the police station and the car was parked outside the station. The car was not going anywhere and neither was Perry. As long as the driver of the car was locked up, the failure to have a neutral and detached magistrate pass on the issue of probable cause should not be excused on

the ground that searching the car without a warrant would be quicker and more convenient. In Trupiano v. United States, 334 U.S. 699 at 706, the Court observed that "no reason is offered for not obtaining a search warrant except the inconvenience to the officers and some slight delay necessary to prepare papers and present the evidence to a magistrate. These are never very convincing reasons...to bypass the constitutional requirement..." Rather than permitting the police to justify not getting a warrant on the ground that it is more convenient for the user of the automobile to have the police ransack his vehicle promptly and not hold his vehicle until probable cause can be determined by a magistrate, the Court should fashion a rule which per-

mits the person inconvenienced - the motorist - to choose between 1. consenting to the search now so that he can be on his way, or 2. insisting that a judicial officer determine that probable cause exists for the search. The Court should grant Certiorari to determine how long exigent circumstances last and when a warrant must be obtained.

The State contends that this Court is not free to consider the question: is this warrantless search justified as an "inventory" search? The Petitioner established at the hearing on the Motion to Suppress that the search occurred without a warrant (R.P. 6-7) and that the police did not see the Petitioner violate any law (R.P.48). The State conceeded that

it has the burden of proving the search lawful. (R.P.7). The Petitioner established prima facie that the search was invalid. If the State sought to invoke the routine inventory exemption to the requirement for a search warrant, then it had the burden of advancing that exemption. In United States v. Jeffers, 342 U.S. 48 at 51, the Court said:

> "Over and again this Court has emphasized that the mandate of the Amendment requires adherence to judicial process. [citations omitted]. Only where incident to a valid arrest [citations ommitted] or in "exceptional circumstances", [citations omitted] may an exemption lie and then the burden is on those seeking the exemption to

show the need for it, McDonald v. United States, 335 U.S. 451 at 455-456." 342 U.S. at 51. See also Vale v. Louisiana, 399 U.S. 30 at 34.

From this allocation of the burden of proof, it follows that if the proceeding in the lower courts failed to preserve the argument that the search was justified as an inventory search, then it is the Respondent, not the Petitioner, who is barred from relying on that special exception to the warrant requirement.

The Respondent reads the record too narrowly. At every stage of the proceedings in the lower courts, the

Petitioner objected to the illegal search and seizure on the grounds that the search and seizure offended the 4th and 14th Amendment. The trial court denied the Motion to Suppress (R.P. 87-86), admitted the items seized over objection (R.P. 371), denied the Motion for new trial (report of sentencing hearing 20-21), the Appellate Court held that the search did not offend Petitioner's 4th and 14th Amendment Rights 401 N.E. 2d at 1269 Petition A-19 through A-22 and the Illinois Supreme Court denied Leave to Appeal.

The record clearly demonstrates that the search was investigative rather than an inventory search. Yet the State in the trial court characterized the search as an "inventory

(R.P.85). That contention should be rejected because the evidence does not support that conclusion. In any event, it was up to the State, not the Petitioner, to prove the justification, since the State failed to advance that justification in this Court that justification should be rejected.

For the reasons stated in the Petition for a Writ of Certiorari and in this Reply, Petitioner asks the Court to grant Certiorari and reverse the Judgment of the Illinois Supreme Court and Illinois Appellate Court.

Respectfully submitted,

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